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May 6, 2010

The Honorable Jocelyn G. Boyd
Chief Clerk and Administrator
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, SC 29211

Re: Public Service Commission Docket No. 2007-414-WS

Dear Ms. Boyd:

The undersigned is filing this letter on behalf of CK Materials, LLC ("**CK Materials**"). This letter is in response to the positions taken and argued by John F. Beach, as attorney for the Haig Point Club and Community Association ("**HPCCA**") in his letters, addressed to you, dated April 26, 2010 and April 30, 2010 (the "**Letters**").

Background regarding Bonds

Mr. Beach in several instances within the Letters makes references to the obligations of Daufuskie Island Utility Company, Inc. formerly known as Haig Point Utility Company ("**DIUC**") to HPCCA in the "**Settlement Agreement**" between HPCCA and CK Materials incorporated into law by Order No. 2008-448 of the South Carolina Public Service Commission ("**PSC**"), he specifically cites the requirement to have the performance bonds maintained by a commercial or insurance entity possessing an A.M. Best Financial Strength Rating of A- or better; and that DIUC is not permitted to satisfy its bonding requirements through an individual or personal surety bond. As the record shows, the Settlement Agreement is between CK Materials and HPCCA, not DIUC. The Settlement Agreement does not make reference or expressly state that DIUC is to maintain the bonds or even that the bonds are to be maintained exclusively on behalf of DIUC. If that was HPCCA's intention such language should have been included in the Settlement Agreement. Such a requirement was never proposed by HPCCA or its counsel. In fact, CK Materials has, on behalf of DIUC, continually maintained its bonds with the Merchant Bonding Company (Mutual) which possesses an A.M. Best Financial Strength Rating of A. These bonds have been in place since July 8, 2008 and the HPCCA has been provided proof of these bonds, including letters of verification, on several occasions, most recently in November 2009. The recent acquisition by CK Materials of the stock of Melrose Utility Company, Inc. ("**MUC**") has not changed the status of the aforesaid bonds.

Legal Position of CK Materials

A. Once a Merger of Entities is Complete the Requested Relief is Permissible and Lawful

On March 1, 2010 CK Materials closed its purchase of one hundred (100%) percent of the stock of MUC and forty (40%) percent of the stock of Haig Point / Melrose Wastewater Treatment Company (“**HPMWTC**”)¹ from the Trustee in Bankruptcy, Robert C. Onorato (the “**Trustee**”) for Daufuskie Island Properties, LLC (“**DIP**”). The sale was approved by the PSC on October 28, 2009 by Order No. 2009-760. South Carolina Department of Environmental Health and Control (“**DHEC**”) issued the requisite permits on January 21, 2010. Since then, CK Materials has operated the acquired MUC system without incident.

As we previously disclosed to the PSC and DHEC staff members and the Office of Regulatory Staff (“**ORS**”), CK Materials was and continues to work towards finalization of its plan to merge MUC, DIUC and HPMWTC into one consolidated entity. This merger and consolidation plan is quite complicated and at this time not complete. The delay is occasioned by several factors in addition to the complexity. The most significant factor frankly is the continuation of the DIP bankruptcy which results in the continued non-payment of water and sewer charges by DIP.

Mr. Beach’s allegation that six (6) months have gone by without CK Materials requesting a merger is misleading and inaccurate; just over two (2) months have passed since CK Materials’ acquisition of MUC and CK Materials has continually worked on the plan of merger since acquisition. Upon completion of the merger, CK Materials plans to consolidate the operations and facilities of the entities so that it may provide the highest quality of service in an efficient manner to the combined service areas of DIUC and MUC. These steps include the continuation of management and operation of both utilities by Guastella Associates, Inc., a professional water and sewer management company, integrating the billing databases into the same software system, conducting an ongoing analysis on how to best integrate the physical water systems, and how to jointly manage reservoir water for the two systems.

As stated above, the Settlement Agreement expressly provides that CK Materials will maintain and keep on file with the Commission two \$350,000 performance bonds, one for the water system and one for the sewer system. The Settlement Agreement does not state that DIUC will maintain the bonds. When presenting HPCCA’s position regarding the application of S.C. Code Ann. §58-5-720 to CK Materials and DIUC Mr. Beach argues, in his letter of April 30 maintains that CK Materials has no direct obligations under S.C. Code Ann. §58-5-720. However, throughout the Letters Mr. Beach argues

¹ CK Materials had previously acquired sixty (60%) percent of HPMWTC when it purchased DIUC as detailed in Docket No. 2007-414-WS.

for the enforcement of both the Settlement Agreement, which places the bond obligation on CK Materials, and his interpretation of S.C. Code Ann. §58-5-720, which, as Mr. Beach argues, places the bond obligation on DIUC, therefore, according to Mr. Beach's position, CK Materials is left in the impossible situation of violating either the Settlement Agreement or S.C. Code Ann. §58-5-720 unless it were to post bonds for DIUC in both the name of DIUC and CK Materials, which was never requested or considered by DIUC, CK Materials or the PSC.

The PSC has previously authorized a consolidation arrangement similar to that which CK Materials proposes in Docket No. 2007-234-WS, Order No. 2007-655, whereby an owner of multiple utilities sought to consolidate the bonds for the multiple utilities under a single "umbrella bond". What CK Materials is requesting is not different in substance and is ultimately in the public's best interest since it enhances operations and the fiscal stability of the provider.

B. CK Materials' Request does not Violate PSC's Order No. 2008-448, nor is there any Significant Risk of Diminished Protection for the Customers of DIUC.

HPCCA argues that a grant of CK Materials' request to extend the coverage of its bonds to cover MUC as well as DIUC will violate the terms of the Settlement Agreement entered into as part of Commission Order No. 2008-448; we disagree. As previously stated, the Settlement Agreement states that *CK Materials*, not *DIUC*, will maintain two separate performance bonds in the amount of \$350,000 apiece; one for water and one for sewer services. To call such prospective approval like this a direct violation of the Settlement Agreement is simply not supported by the facts. CK Materials is in substantial compliance with every provision of the Settlement Agreement and fully intends to stay in compliance.

We believe that the past experience of both the PSC and ORS will confirm our conclusion that, as both MUC and DIUC water systems are relatively small systems compared to most other water systems in South Carolina, and since CK Materials has posted the maximum bonds for required for a water and sewer utility system, it is highly unlikely that any incident could so disrupt and damage MUC so as to exhaust the performance bonds and leave DIUC and its customers vulnerable and unprotected. MUC was previously bonded at only \$140,000 for water and \$140,000 for sewer.

Mr. Beach argues that DIP did not have enough financial resources to properly maintain its facilities and implies that MUC's systems have been neglected or poorly maintained during the period of the bankruptcy estate. This is not the case, during the continuation of DIP's bankruptcy CK Materials, pursuant to its Stock Purchase Agreement, assumed management of and operated MUC's system prior to the actual acquisition date. In addition, as part of the consideration for the purchase of MUC, CK Materials has agreed to make all repairs to the system that may be required by the PSC. It is my understanding that the projected cost of the renovations to the MUC system required by the PSC is

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less than \$100,000, and CK Materials plans to commence work in the near term.

Since the MUC system and the DIUC system are limited in size by their island geography, are physically located adjacent to each other, share a wastewater treatment facility, and since the potential for increased capacity is generally known, it is difficult for us to find significant merit in HPCCA's arguments. These are two relatively small water and sewage system service areas with maximum number of taps permitted to date at 1079 for the combined systems. Furthermore, the physical size of Daufuskie Island limits the possibility of the water systems being significantly expanded beyond its current scope.

C. Granting CK Materials' Request Would not Result in any Material Diminishment of HPCCA's Rights or Interests

We do not believe that PSC's approval of CK Materials requested relief in our March 30 letter would materially diminish the protections afforded the customers of DIUC by way of the Settlement Agreement; therefore we did not provide notice to them of such request. CK Materials will cooperate with the PSC and ORS in any manner deemed beneficial; including participating in a hearing with HPCCA in order to address their concerns more fully.

Conclusion

For the reasons set forth herein; CK Materials requests that PSC grant temporary approval of six (6) months for the extension of CK Materials' performance bonds to cover MUC's systems as well as those of DIUC for a limited period of time during which it may complete the merger of DIUC, MUC and HPMWTC. This will allow for MUC to comply with its obligations to be bonded during the interim period. If the proposed merger is not completed within the time proscribed then CK Materials will provide separate bonds for MUC.

Yours very truly,

NOVIT & SCARMINACH, P.A.

Charles A. Scarminach

c: John F. Beach, Esquire
Mr. Willie Morgan, Office of Regulatory Staff
Mr. Jaime J. Karabinchak